

SEALED

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 UNITED STATES OF AMERICA,

6 Plaintiff,

2:10-cr-00287-KJD-VCF

7 vs.

SEALED EX PARTE ORDER

8 LANCE KELLOW,

9 Defendant.
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11 **ORDER**

12 On December 29, 2011, at the request of the Government, a sealed hearing was held regarding
13 the Government's concern that a potential conflict of interest exists between Attorney Luis J. Rojas and
14 his client, defendant Lance Kellow. The Government reported that the Grand Jury is investigating Mr.
15 Rojas. The activity under investigation is not related in any way to the transactions at issue in this case,
16 but the Grand Jury is considering charges under the same statutes alleged against Lance Kellow.

17 The Government is certain that Mr. Rojas is not aware of this investigation. The Government
18 anticipates that it will not be in a position to advise Mr. Rojas that he is a target of an investigation for at
19 least 60 days. Because of the need for secrecy, the Government requested this *ex parte* hearing.

20 The Government anticipates that the trial of this case, currently set for January 9, 2012, will be
21 continued for only approximately 30 days, because of the second superseding indictment filed on
22 December 21, 2011. The Government is not aware of any facts that create a conflict, as long as Mr.
23 Rojas is not aware that he is under prosecutorial scrutiny. However, if at some time before or during
24 trial, these facts become known, then Lance Kellow would need to consult with independent counsel
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1 before he could waive a potential conflict of interest. If Lance Kellow does not waive the conflict, then
2 his Sixth Amendment Right to counsel would require his retaining new counsel.

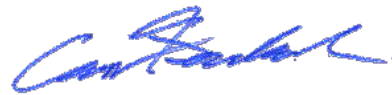
3 The Government is concerned over the appearance of impropriety, even if Mr. Rojas is not aware
4 of the prosecutorial scrutiny currently focused on him, should it later come to light that Mr. Rojas was
5 being investigated for mortgage fraud at the same time he was defending Lance Kellow for violations of
6 the same statutes.

7 Because this case was filed eighteen months ago, the Government is concerned that the Trial
8 Judge will not grant a continuance long enough to allow resolution of this potential conflict issue,
9 through (1) a decision not to indict Mr. Rojas, (2) a waiver of the conflict or (3) retention of new
10 counsel. As long as the Grand Jury proceedings remain secret, resolution cannot occur.

11 At this point there is no conflict of interest. The Government concerns will remain sealed,
12 pending further Order of the Court.

13 IT IS SO ORDERED.

14 DATED this 29th day of December, 2011.

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17 CAM FERENBACH
18 UNITED STATES MAGISTRATE JUDGE
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